(Tr. 127–128). No search warrant had been obtained for examination of the serial number on the car (Tr. 143–144). In cross-examination of agent Feraco, the court sustained an objection to a question as to the exact location on the Cadillac of its true serial number, on the ground that "[t]hose are secret numbers on automobiles" (Tr. 142–143, 128).

On November 4, the stolen Cadillac was returned to Planned Auto Management at Birmingham, Michigan and picked up by the lessee, Bennett (Tr. 10–11, 17). The car was brown with a black top, the same color as when it was stolen (Tr. 17–18).

2. Petitioner testified on his own behalf that he did not deliver or sell the stolen Cadillac to Sheffield, as Sheffield had testified (Tr. 196, 215). Petitioner also denied ever having seen the notary prior to trial and denied signing the bill of sale (Gov. Ex. 8) in the name of Wilbur Parker (Tr. 215–216).

3. In its charge to the jury, the court instructed that the burden of proof was upon the prosecution to establish the guilt of petitioner beyond a reasonable doubt (Tr. 227–230). A subsequent part of the charge was as follows (Tr. 232–234):

> Now, the Government must prove some essential elements of this crime *beyond a reasonable doubt*. And I would like to call your attention to these essential elements.
>
> (1) That the defendant, Felix Walls, did receive and conceal a motor vehicle, a Cadillac automobile;

(2) That the defendant did so with unlawful and fraudulent intent;
(3) That said Cadillac was moving as interstate commerce from Birmingham, Michigan to Dayton, Ohio;
(4) That Felix Walls did commit said act knowing that the motor vehicle, the Cadillac, was stolen; and
(5) That the offense charged was committed on or about October 27, 1967 in the Western Division of the Southern District of Ohio.

The Government must prove each of these essential elements. And if the Government fails to prove anyone of those five elements your verdict must be for the Defendant. * * * In a criminal prosecution for receiving and concealing a motor vehicle, knowing it to have been stolen is an essential element of the crime and it must be shown by a *preponderance of the evidence* in order to establish the guilt of the accused. * * * Now, that briefly, ladies and gentlemen, is your duty to determine whether Felix Walls did receive and conceal a Cadillac moving in interstate commerce knowing the said Cadillac was stolen. If you find as I have outlined to you that the Defendant is guilty of all these essential elements, have proven *beyond a reasonable doubt* then you shall find him guilty. If, however, you find that the Government has failed to establish *beyond a reasonable doubt* the truth of anyone or more of the essential elements of this crime you will return a verdict of not guilty. [Emphasis added.]

ARGUMENT

As noted, the petition is out of time. In any event, petitioner raises no issue requiring plenary review by this Court.

1. Contrary to petitioner's contention (see Pet. 6–9, 15–19), the evidence we have detailed was sufficient to support his conviction for receiving and concealing the stolen Cadillac moving in interstate commerce with knowledge that it had been stolen. See *Seefeldt* v. *United States*, 183 F. 2d 713, 715–716 (C.A. 10); *United States* v. *Meek*, 388 F. 2d 936, 938 (C.A. 7), certiorari denied, 391 U.S. 951; *Spradlin* v. *United States*, 394 F. 2d 816, 817 (C.A. 9). The argument that petitioner's possession in Ohio some eight days after the theft in Michigan was too remote to establish the interstate movement of the vehicle wholly overlooks the fact that the actual sale to Sheffield came after negotiations by petitioner which preceded the theft. Petitioner's receipt of the car which had moved in interstate commerce could be reasonably inferred from his prior arrangement to sell the car and from the fact that Sheffield saw him driving it in Dayton only eight days after it had been stolen in Michigan. The jury could also reasonably find that petitioner had concealed the car and knew it was stolen, from the devious manner in which he tried to effect a false Ohio registration by giving Sheffield fictitious Massachusetts registration papers, inquiring about the requirements for a bill of sale, and placing a false signature on the bill of sale. This was a factual issue for the jury to decide. See *Schwachter* v. *United States*, 237 F. 2d 640, 644 (C.A. 6).

2. There was no plain error as petitioner contends (Pet. 10–15), by reason of the trial court's failure *sua sponte* to define the phrase "moving as interstate commerce." The court instructed that one of the essential elements of the crime which was required for a finding of guilty was that "said Cadillac was moving as interstate commerce from Birmingham, Michigan to Dayton, Ohio" (Tr. 232). Petitioner presumably was satisfied with this charge; it was composed of simple, unambiguous, and clearly understood language. Since he did not object to this instruction nor ask for an additional instruction on this issue, it was too late for him to raise this point on appeal. F. R. Crim. P., Rule 30.

Cases such as *Schwachter* v. *United States*, 237 F. 2d 640 (C.A. 6) and *United States* v. *Lang*, 239 F. 2d 676 (C.A. 3), upon which petitioner relies, are inapposite. In those cases the trial court erred by assuming in its charge that the stolen car had moved in interstate commerce, and thus took away from the jury a controverted issue of material fact. Here, on the other hand, the court properly left it for the jury to decide whether the car was "moving as interstate commerce."[4]

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[4] Petitioner also contends that the court's charge was erroneous in stating that a defendant's knowledge that the car had been stolen must be shown by a "preponderance of the evidence." That this was merely an inadvertent slip of the tongue is shown by the fact that petitioner's experienced counsel made no objection, and by numerous other excerpts from the charge properly requiring that all elements of the crime be proved "beyond a reasonable doubt" (Tr. 227–230, 232–234; see Statement *supra*, pp. 6–7).

3. Petitioner was not denied due process of law by the procedure the trial court followed in requiring counsel to relate objections and motions to the court reporter. The reporter would read counsel's arguments to the court, after which the court would make its ruling. Petitioner contends that such procedure prejudiced him because it was conducted without excusing the jury (Pet. 19–20). Regarding this, the trial court in its order overruling petitioner's motion for acquittal or a new trial, stated (R. 10, p. 2):

> 2. Defendant's counsel cannot be serious in claiming error by the Court's refusal to hear motions and arguments of defense counsel. This was not a complicated case for trial and all motions made by defense counsel and rulings made by the Court were made directly to the Court Reporter and were not within the hearing of the members of the jury.

(See, *e.g.*, Tr. 40, 122–123, where motions by defense counsel were made "[o]ut of hearing of the jury.")

4. Petitioner contends that the government failed to comply with *Brady* v. *Maryland*, 373 U.S. 83, by concealing evidence favorable to the defense (Pet. 20–21). The record refutes this contention. Petitioner asked for the submission into evidence of the report of an FBI handwriting expert, who stated that due to lack of adequate handwriting samples, he could not determine whether petitioner prepared Gov. Exs. 5, 6, 7 and 8. The government attorney pointed out that the reason for this was that petitioner himself had refused to submit handwriting samples for comparison (Tr. 175–176). This report was not evidence favor-

able to the defense; it was merely a showing that the handwriting expert had insufficient documentary material upon the basis of which to render an intelligent opinion.

Petitioner also claimed that the government was concealing a report of an FBI interview with Mrs. White, which showed that she witnessed the signing of the bill of sale (Gov. Ex. 8) before the notary and said that although a photograph of petitioner looked familiar, she was unable to say if she had seen him in the notary's office or at some other place. The government attorney pointed out that he was unable to serve a subpoena on Mrs. White, and that he was not concealing evidence favorable to the defense (Tr. 177–178). The copies of the subpoenas contained the addresses of Mrs. White and some other witnesses who did not testify (R. 2). Petitioner could have subpoenaed any of these persons as defense witnesses if his investigation had shown that their testimony would have been favorable to the defense.

5. Petitioner claims he was denied effective assistance of counsel since he did not have local co-counsel at his trial (Pet. 22–25). The local rule in effect at the time of the trial on April 17, 1968, to which petitioner apparently refers, is Rule 4 of the Rules of the United States District Court for the Southern District of Ohio, effective March 1, 1950.[5] A reading of

[5] Rule 4: "*Designation of Local Counsel:* Whenever a party to a cause is represented only by counsel not residing within the district, such counsel shall designate by writing filed in the cause, some member of the Bar of this court residing in the district upon whom notices and papers may be served."

this Rule does not make it absolutely mandatory that an accused have local co-counsel at the trial; it merely provides that an accused's out-of-district counsel shall designate local counsel upon whom notices and papers may be served.

Petitioner concedes that the trial record does not show that he was denied local counsel (Pet. 23). There is nothing in the record to indicate that after his designated local counsel, Mr. Saeks, withdrew, petitioner could not have obtained other local counsel. There was nothing in Rule 4 to prevent the court from hearing the case without the presence of a local co-counsel for petitioner. Since petitioner was represented by experienced Michigan counsel of his own choice, who competently and vigorously defended his case, he was not denied the effective assistance of counsel.

6. Petitioner contends that in the cross-examination of FBI agent Feraco the court erred in sustaining an objection to a question as to the exact location on the stolen Cadillac of its true serial number (Pet. 25–27). The court's ruling, however, was proper on the ground that "[t]hose are secret numbers on automobiles" (Tr. 143). Petitioner has cited no pertinent authority for the proposition that the confidential nature of the location of the true serial numbers on automobiles should no longer be protected.[6] Public policy is served by keeping such locations confidential and thus unavailable to potential automobile

[6] *Roviaro* v. *United States*, 353 U.S. 53, in which the disclosure of an informer's identity was required because he had participated with the accused in the crime involved so that his testimony might have been helpful to the defense, is in no way analogous to the situation in the instant case.

thieves. Apart from this, even if petitioner had been told the exact location of the true serial number, the record does not show how this would have been helpful. Since he did not claim that the number on the impression lifted from the car was erroneous, mere knowledge as to where the number came from would not have aided his defense.

7. We do not see how petitioner had any possessory interest in the automobile which would afford him a basis to assert that there was an illegal search. Since Sheffield had a possessory right in the car he could properly consent, as he did (Tr. 67, 126), to turn it over the F.B.I. agent Feraco for examination without a search warrant.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
WILL WILSON,
Assistant Attorney General.
JEROME M. FEIT,
ROBERT G. MAYSACK,
Attorneys.

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